THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar J. Dickson
Appellate No.: 2012-212566
Indictment Nos.: 2011-GS-38-0114, 0124

The State .....Respondent,

vs.

Darius Ransom-Williams.....Appellant.

INITIAL REPLY BRIEF OF APPELLANT

Sheila M. Bias
RICHARDSON, PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400

Robert Dudek
Appellate Defense
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201

Counsel for Appellant Darius Ransom-Williams

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ARGUMENT

I. The State fails to provide a compelling argument as to why Appellant is not entitled to a new trial based on the inadequacy of the Reconstruction Hearing.

Appellant is entitled to a new trial because he cannot raise any argument with regard to the propriety of the Solicitor's closing argument. The law on this issue is clear. A defendant complaining of a defective transcript is entitled to a new trial if the defendant "establishes that the incomplete nature of the transcript prevents the appellate court from conducting meaningful appellate review." See Adams v. H.R. Allen, Inc., 397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012) ("[T]he reconstructed record must allow for meaningful appellate review."). Therefore, "before a defendant can establish that he is entitled to a new trial on the basis of an inadequate reconstructed record, he must identify a specific appellate claim that [an appellate court] would be unable to review effectively using the reconstructed record." Id. at 325, 644 S.E.2d at 273.

A defendant loses his right to challenge the propriety of a prosecutor's argument by failing to contemporaneously object. See State v. Hawkins, 310 S.C. 50, 62, 425 S.E.2d 50, 57 (Ct. App. 1992). On appeal, the appellate court must review the impropriety of a Solicitor's closing argument in the context of the entire record. See Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). The appellant has the burden of proving he did not receive a fair trial because of an alleged improper argument by the Solicitor. See Humphries v. State, 351 S.C. 362, 373, 570 S.E. 2d 160, 166 (2002). Indeed, the "relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v.

Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997) Thus, the State is incorrectin that the Appellant should not be granted a new trial on "mere speculation" or that Appellant must show prejudice. Rather, the appropriate standard is whether the Appellant can identify the specific appellate claim that this Court would be unable to effectively review using the reconstructed record.

On this record, the reconstruction hearing was wholly inadequate as Appellant can never properly raise a challenge as to the propriety of the Solicitor's closing argument without the actual closing argument made before the trial judge. As conceded by the Solicitor during the reconstruction hearing, "I don't really see any way I can word-for-word attempt to come back and say what I said to the jury a year and a-half ago." Reconstruction Transcript at p.23, lines 6-8. Nor can Appellant challenge whether any rulings on objections made during the closing argument were errors of law. It is paramount that the reconstruction record be sufficient to comport with Appellant's due process rights. Such is not the case here.

In addition, the fact that the solicitor, trial counsel, and the judge cannot recall what occurred during the actual closing arguments at trial is the *exact* reason why the reconstruction hearing is inadequate. That the relevant parties cannot recall what occurred at a trial taking place over four years ago (and almost two years prior to the reconstruction hearing) is the reason why trials are transcribed in the first place. Without the actual closing argument in this case, Appellant has lost the opportunity to challenge the propriety of the solicitor's closing argument and to question whether the trial judge accurately ruled on any objection to the solicitor's closing argument. The inability of this Court to review this information from trial is the specific right that Appellant has lost.

Thus, this is not a case, as the State has framed the issue, of whether Appellant is entitled to a new trial based on "mere speculation." Rather, the issue is whether Appellant is to spend the better part of his adult life in prison because he is unable to challenge the propriety of the Solicitor's closing argument at his trial which may well have so infected the trial that his conviction is a violation of his due process rights. Accordingly, this Court must order a new trial.

II. Alternatively, should this Court find the record is sufficient for appellate review, the trial court erred in admitting Appellant's statements.

a. Appellant's statements were inadmissible because they were obtained in violation of Appellant's constitutional rights.

As this Court is aware, "[a] confession is like no other evidence." Arizona v. Fulminante, 499 U.S. 279, 296 (1991). A confession is often the most probative and damaging evidence that can be admitted against a defendant. Id. Therefore, "[a] criminal defendant is deprived of due process if his conviction is founded, in whole, or in part, upon an involuntary confession." State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964)).

The State conveniently omits that the trial judge specifically found that Appellant's mother, not Appellant, reinitiated contact with police. See (Transcript p.73, lines 1-4). Thus, it was an error of law for the trial judge to allow the admission of the statements. The jurisprudence on this issue requires that the *accused* himself reinitiate the contact. Thus, this is more like the situation presented in State v. Anderson, 357 S.C. 514, 593 S.E.2d 820 (Ct. App. 2004), rather than that of In re Tracy B, 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010). This difference is significant and cannot be overlooked by this Court.

"An accused having expressed his desire to deal with the police only through counsel is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication*, exchanges, or conversations with the police." Edwards v. Arizona 451 U.S. 477, 484-85 (emphasis added); State v. Henderson, 286 S.C. 465, 334 S.E.2d 519 (Ct. App. 1985) (recognizing that once the right to counsel has been asserted, questioning of the suspect must cease until counsel is either obtained for the suspect or retained by him; only in instances when the suspect initiates subsequent conversations or communications with the investigating authority is a waiver of the right to counsel possible).

> If the police do subsequently initiate an encounter in the absence of counsel (assuming there has been no break in custody), the suspect's statements are presumed involuntary and therefore inadmissible as substantive evidence at trial, even where the suspect executes a waiver and his statements would be considered voluntary under traditional circumstances.

McNeil v. Wisconsin, 501 U.S. 171, 177 (1991). "Police officers simply cannot continue to question a suspect despite his request for counsel 'in the hope that he might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all.'" United States v. Johnson, 400 F.3d 187, 194 (4th Cir. 2005) (citing Smith v. Illinois, 469 U.S. 91 (1984)).

Contrary to the State's argument, Appellant's confession was the single and strongest piece of evidence from which the jury could determine his guilt. Without the confession, the State had little evidence to establish Appellant's guilt. Specifically, the victim's testimony surrounding the incident was undercut by his inaccurate recollection of the events after suffering severe head injuries and forensic evidence which strongly

contradicted his story, and a witness' testimony which was based on speculation and conjecture. Without Appellant's statements, the jury had little evidence on which to convict Appellant. The statements here, amounting to a confession, taken in violation of Appellant's constitutional rights, discloses motive, means, and profoundly impacted the jury. See Fulminante at 296 ("While some statements by a defendant may concern isolated aspects of the crime or may be incriminating only when linked to other evidence, a full confession in which the defendant discloses the motive for and means of the crime may tempt the jury to rely upon that evidence alone in reaching its decision. In the case of a coerced confession such as that given by Fulminante to Sarivola, the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless.").

Further, the fact that Appellant did not "ask again" for an attorney after he was transported from one facility to another is of no impact on this analysis. The jurisprudence is clear. Once an accused has invoked his right to counsel, police are not to initiate any further contact with him. Appellant should have been constitutionally protected from subsequent police interrogation without the presence of his attorney.

The facts and circumstances herein clearly demonstrate the trial court erred in finding the confession was obtained in accordance with Edwards and its progeny. The trial court specifically found that the police contact was reinitiated by Appellant's mother and not Appellant. Most similar to the facts of Anderson, Appellant's mother suggested that the police interrogate Appellant a second time. Unlike Tracy, Appellant's mother did not speak with Appellant and then immediately after inform law enforcement that her son

was prepared to talk. The actions of Appellant's mother amount to coercion and give no indication of the Appellant himself reinitiating contact with law enforcement. Consequently, the trial court abused its discretion in allowing the confession to be admitted because the law clearly states that the contact has to be reinitiated by the defendant himself.

Therefore, the trial court abused its discretion in allowing the confession to be admitted because the law clearly states that the contact has to be reinitiated by the defendant himself. See State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."). Even if the contact comes through a third-party, the contact must be at the behest of the defendant. Appellant, his mother, and Officer Shumpert testified that Appellant's mother told police to speak with Appellant.

b. Appellant's statement was not voluntary.

As an initial matter, the State is incorrect in its assertion that this issue is not preserved for appellate review. The argument that Appellant's statements were involuntary was presented to and ruled upon by the trial judge. See Transcript pg. 73, lines 12-20 ("I find that [Appellant] received his Miranda [sic] Rights; that he understood those rights; that he voluntarily made the statements") (emphasis added). Therefore, this topic is preserved for appellate review.

Due Process compels that the voluntariness inquiry require the trial judge to examine the totality of the circumstances—which did not occur here. State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 449 (Ct. App. 2007). "The test of voluntariness is

whether a defendant's will was overborne by the circumstances surrounding the given statement." Id. (internal citations omitted). "The due process test takes into consideration the totality of the circumstances—both the characteristics of the accused and the details of the interrogation." Id. (citing Dickerson v. United States, 530 U.S. 428, 434, (2000)). Some factors which may be considered in the totality of the circumstances analysis include police coercion, length of the interrogation, its location, its continuity, and the defendant's maturity, education, physical condition, and mental health. See Withrow v. Williams, 507 U.S. 680, (1993). Additionally, it is proper to consider the presence of third-parties in examining whether a defendant's will has been overborne. See e.g. Spano v. New York, 360 U.S. 315 (1959) ("The use of Bruno, characterized in this Court by counsel for the State as a 'childhood friend' of petitioner's is another factor which deserves mention in the totality of the situation. Bruno was the one face visible to petitioner in which he could put some trust. There was a bond of friendship between them going back a decade to adolescence. It was with this material that the officers felt that they could overcome petitioner's will.").

Here, the record is devoid of any consideration of the above factors by the trial judge. The trial judge's finding was limited to stating Appellant received his Miranda rights; that he understood those rights, and that he voluntarily made the statements. (Transcript p.59, lines 6-10; p. 73, lines 12-15). Had the Court accurately considered the relevant factors, the court would have determined Appellant's statement was not voluntary.

III. The admission of the statements was not harmless error.

The trial judge's error in admitting the statements was not harmless. See

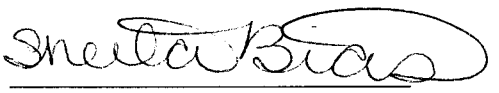
Henderson, 286 S.C. at 470, 334 S.E.2d at 522 ("Having determined that Edwards barred the admissibility of the defendant's confession, we now consider whether the error was harmless beyond a reasonable doubt. . . . If it was not, reversal is required."). "An alleged error is harmless if the appellate court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict." Wells v. Halyard, 341 S.C. 234, 533 S.E.2d 341 (Ct. App. 2000) (citing State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998)). Importantly, however, "no definite rule of law governs [this finding]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Byers, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011). The admission of the confession was crucial to the jury verdict because without the confession, only circumstantial evidence was available. The State's evidence included testimony from the victim, who had extensive head trauma and whose testimony was not born out by the forensic evidence, and a witness' assumptions. There is no physical evidence linking Appellant to the crime. Further, the inconclusiveness of the State's witnesses' testimony, without the confessions, leaves a large cavity of reasonable doubt as to Appellant's guilt.

As this Court stated in State v. White, "harmless error rules... serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial." 410 S.C. 56, 59, 762 S.E.2d 726, 729 (Ct. App. 2014). Impliedly, holdings of harmless error should be reserved for situations in which errors are small and insignificant. The admission of a confession is no small matter. Moreover, in this situation, such a confession is far from insignificant. A confession in the minds of a juror will be *the only thing* considered once

admitted. Once a confession is admitted, it is the most significant piece of evidence and all other evidence becomes completely *insignificant*. Furthermore, in order for an insignificant error to be considered harmless, guilt must have been "conclusively proven by competent evidence such that no other rational conclusion can be reached." Byers, 392 S.C. at 447, 710 S.E.2d at 60. Here, there are multiple other rational conclusions that could be reached by reviewing all other trial evidence. Many times, the testimony was inconclusive and contradictory, and it would have been rational for a juror to find the circumstantial evidence unconvincing. For these reasons, admission of Appellant's confession was in error and this error was not harmless.

CONCLUSION

Based on the foregoing, Appellant respectfully requests this Court find the trial court erred in finding the record was sufficient for appellate review and grant Appellant a new trial. In the alternative, Appellant respectfully requests this Court find the trial court erred in admitting the confessions and such confessions were not harmless error—entitling Appellant to a reversal of his convictions.



Sheila M. Bias, SC Bar # 100005
Richardson Plowden & Robinson, PA
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
803-576-3718
sbias@richardsonplowden.com

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
rdudek@sccid.sc.gov
Attorneys for Defendant/Appellant
Darius Williams-Ransom

February 27, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar J. Dickson
Appellate No.: 2012-212566
Indictment Nos.: 2011-GS-38-0114, 0124

The State ..... Respondent

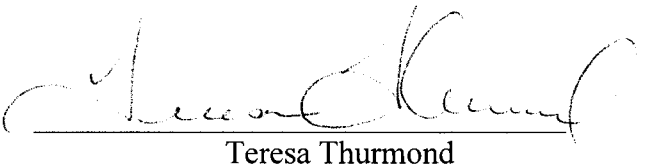
vs.

Darius Ransom-Williams.....Appellant.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Darius Ransom Williams, do hereby certify that I have this date served the foregoing **Appellant's Initial Reply Brief** by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

David Spencer
Senior Assistant Attorney General
S.C. Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Teresa Thurmond

Dated: February 27, 2015

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29[illegible]2
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0[illegible]6

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29[illegible]8
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1[illegible]3

CHARLESTON 40 Calhoun St., Suite 220 • Charleston, SC 29[illegible]1
P 843.805.6550 F 843.805.6[illegible]9

www.richardsonplowden.com

February 27, 2015

Columbia
Direct Dial (803) 576-3718
sbias@richardsonplowden.com

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State, Respondent vs. Darius Ransom-Williams, Appellant
Trial Case No.: 2011GS3800114, 2011GS3800124
Appellate Case No. 2012-212566
Our File No.: 095-559

Dear Ms. Kitchings:

As counsel for Appellant Darius Ransom-Williams, I have enclosed for filing an original Initial Appellant's Reply Brief, along with our original Certificate of Service. I have also enclosed one additional copy of our Initial Appellant's Reply Brief and would request that it be file-stamped and returned to our courier.

We are this day serving a copy of our Appellant's Initial Reply Brief ahe Respondent.

With kind regards, I am

Sincerely,

Sheila M. Bias
S.C. Bar # 100005

SMB/
Enclosure
cc: David Spencer, Senior Assistant Attorney General (w/enclosure)
Robert M. Dudek, Esquire (w/enclosure)
Darius Ransom-Williams (w/enclosure)

095-559 SMB

RICHARDSON PLOWDEN
ATTORNEYS AT LAW

[redacted] P.O. Drawer 7788 • Columbia, SC 29202

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211